

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COUNTY OF SAN DIEGO OFFICE OF
EDUCATION.

OAH CASE NO. 2012110566

ORDER DENYING COE'S MOTION
TO ADD PARTIES

On November 16, 2012, Parent on behalf of Student (Student) filed a request for a due process hearing (complaint)¹ naming the San Diego County Office of Education (COE) as respondent. In his complaint, Student alleges three procedural issues and five substantive issues regarding COE's alleged failure to provide Student a free appropriate public education (FAPE) while Student was, and continues to be, incarcerated in Juvenile Hall. The main gist of Student's complaint is that he was denied a FAPE because COE refuses to place him in a residential treatment center (RTC).

On December 14, 2012, COE filed a motion to add parties. COE seeks to add as respondents (1) Cajon Valley Union School District (Cajon Valley), which is Student's district of residence; (2) the San Diego County Health and Human Services Agency (HHS); (3) San Diego County Probation Department (Probation); (4) California Department of Health Care Services (DHCS); and (5) California Department of Education (CDE). On December 19, 2012, Student filed an opposition to the motion. On December 21, 2012, HHS and Probation (collectively referred to as the "County") filed an opposition to the motion. Neither DHCS nor CDE submitted a response.

On December 24, 2012, COE filed a response to the oppositions.

APPLICABLE LAW

Regarding joinder of a party, OAH considers the requirements of the Code of Civil Procedure. Under that Code, a "necessary" party may be joined upon motion of any party. Section 389, subdivision (a), of the Code of Civil Procedure defines a "necessary" party as follows:

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

Education Code sections 56500 and 56501, subdivision (a), establish two requirements for including an entity in a special education due process hearing. First, the entity must be a public agency “providing special education or related services.” (Ed. Code, § 56500.) Second, it must be “involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).)

In California, a county office of education, like COE, is responsible for the provision of a FAPE to individuals who are confined in juvenile prisons and educated in juvenile court schools within the county during pendency of their detention. (Ed. Code, §§ 48645.1, 48545.2, and 56150.; see also *Los Angeles County Office of Education v. C.M.* (C.D. Ca. 2011) 2011 WL 15843414, at *3.)

The Ninth Circuit, in *Lake Washington School District No. 414 v. Office of Superintendent of Public Instruction* (9th Cir. 2011) 634 F.3d 1065, 1068, ruled that the Section 1414 of Title 20 of the United States Code establishes a private right of action for disabled children and their parents but does not create a private right of action for school districts and other local educational agencies apart from contesting issues raised in the complaint filed by the parents on behalf of their children. The *Lake Washington* court clearly summarized its decision thusly:

In sum, we join our sister circuits in holding that a school district or other local education agency has no express or implied private right of civil action under the

IDEA to litigate any question aside from the issues raised in the complaint filed by the parents on behalf of their child. (634 F.3d at 1069.)

In a recent case, the Eastern District of California, per the Hon. Morrison C. England, Jr., dismissed a suit brought under the IDEA by a county office of education against CDE. Judge England stated that “*Lake Washington* makes clear that while parents and children may have a private right of action to challenge the IDEA’s procedural protections, this right does not extend to local education authorities such as YCOE [Yola County Office of Education] to litigate questions other than those raised in the complaint filed by the parents of the disabled child.” (*Yolo County Office of Education v. California Department of Education* (E.D. Ca. 2012) 2012 WL 3143904, at *5.)

Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties. This section relates to parties named by the petitioner in its initial complaint. But, Government Code section 7586, subdivision (d) expressly prohibits local education agencies from using IDEA due process procedures against each other, such that a school district can never be prejudiced by failure to join another school district because there is no right in an IDEA hearing to a cross-complaint between agencies. Instead, California law contains procedures for separate administrative proceedings to handle the issue of inter-agency disputes about funding. (Gov. Code, § 7585; Cal. Code Regs., tit. 2, § 60600.) Thus, it is clear that both the IDEA and the state laws implementing it expressly reject the principle that a petitioning party must obtain all possible relief in one proceeding, and expressly reject the principle that a respondent agency can use an IDEA due process hearing to shift responsibility to another agency.

DISCUSSION

Short Statement of Facts

Student was a special education student in the sixth grade in Cajon Valley, the district where he resided. On January 16, 2012, Student was involved in an incident where he allegedly stabbed and killed another minor and was detained in the San Diego County Juvenile Hall. While in detention, Student attended, and still attends, the Sarah Anthony Juvenile Court School where he is receiving special education services. From February 2012, and continuing, there have been at least seven IEP team meetings. In April 2012 through June 2012, Student was given a psycho-educational assessment by HHS on behalf of the COE. The HHS assessor recommended placement in a locked RTC because of public safety reasons. The HHS assessor is a member of Student’s IEP team. Probation also recommended to the Juvenile Court judge that Student be placed at a RTC.

On August 12, 2012, the Juvenile Court judge found Student incompetent to stand trial. In October 2012, an IEE was conducted and corroborated the findings and

recommendations of the HHS assessor. The COE IEP team offered placement at Sarah Anthony with services and rejected the RTC recommendation of HHS as not being educationally related.

COE's Contentions as to Each Party

COE's contentions as to why each of the parties is a necessary party are thus:

As to Cajon Valley, COE states that as the district of residency, Cajon Valley will be the local education agency responsible for Student's placement upon his release from Juvenile Hall. COE points out that if the Juvenile Court judge orders placement at an RTC, as recommended by Probation, COE's responsibility for placement, including financial, ceases and would go to Student's district of residence.²

As to HHS, COE contends that HHS conducted the assessment and provided all mental health services to Student during his detention.

As to Probation, COE contends that Probation provided mental health and counseling services under its STAT program. COE fails to allege that Probation provided any such services pursuant to the IDEA.

As to DHCS, COE alleges that this agency provides funding for mental health services not related to education.

As to CDE, COE alleges that CDE failed to set-up appropriate mechanisms to insure coordination between agencies to provide special education services.

Conclusions

COE fails to demonstrate that Probation, DHCS or CDE were individually responsible to provide a free appropriate public education (FAPE) to, or make educational decisions about Student or any particular student. The duty to administer the allocation of funds and local plans is not a duty to provide FAPE to individual students or a duty to make educational decisions for individual students.

Under the authority cited above, the IDEA places responsibility on a public agency if that public agency was involved in making decisions about that particular student. COE has not alleged any facts in its motion nor cited to any authority, that support a finding that DHCS, Probation or CDE are proper parties to this action.

As to Cajon Valley, it is imperative to look to the allegations in the complaint. The complaint lacks any factual allegations relating to Cajon Valley. It then is necessary to look

² The Juvenile Court judge is currently in the process of considering placement. COE is not a party to this hearing and determination.

to the issues raised. The procedural issues raised are that on three IEP's, COE failed to offer a specific placement outside of juvenile hall.³ The substantive issues are that COE failed to place Student at a RTC on August 21, 2012 IEP; failed to provide appropriate services (therapy, counseling, mental health, academics, and occupational therapy) from January 16, 2012 to October 30, 2012; and whether an RTC is the least restrictive environment. Student's proposed resolutions are for compensatory education and placement at an RTC with transportation costs at public expense. All these issues specifically relate to COE, which was the responsible education agency. Since Cajon Valley did not participate in any of these decisions or provided any of the services, it is not a proper party.

As to HHS, although it did provide the psycho-educational assessment, provide mental health services and was a participant in the IEP decision making process, COE was the local education agency responsible for providing to Student a free appropriate public education. COE is attempting to, in effect, file a cross-complaint against HHS. As stated above, Government Code section 7586, subsection (d) expressly precludes this. COE has available to it a separate administrative proceeding to handle its inter-agency dispute with HHS. (See, Gov. Code, § 7585, Cal. Code Regs, tit. 2, § 60600.)

ORDER

The motion to add parties denied.

Dated: December 24, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

³ The three IEP's were on August 23, September 10, and October 30, 2012.